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OFFICE OF GENERAL  
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**BEFORE THE FEDERAL ELECTION COMMISSION**

**In the matter of:**

**Aristotle International, Inc.**

**MUR 6334**

**ARISTOTLE INTERNATIONAL, INC. RESPONSE TO THE  
COMPLAINT FILED BY NGP SOFTWARE, INC.**

This matter was generated by a Complaint filed on July 19, 2010 by NGP Software, Inc. ("NGP"), a commercial competitor of Aristotle International, Inc. ("Aristotle"). This is the second complaint filed by NGP alleging a violation of 2 U.S.C. § 438(a)(4) by Aristotle's political committee accounting and reporting software because Aristotle makes FEC contributor data available in non-list form.

Rather than compete with Aristotle's technical prowess or file a 2 U.S.C. § 437g(8) suit contesting the Commission's disposition of its first complaint involving Aristotle's Campaign Manager 5 "CM5", NGP has simply again filed and publicized a Complaint that asks the Commission to prohibit Aristotle from offering its technically advanced campaign accounting and reporting software, called Aristotle 360, to political committees. See July 19, 2010 NGP press release about its new complaint, and criticizing "the three Republican-appointed Commissioners" for voting to dismiss NGP's first complaint. <http://www.prnewswire.com/news-releases/aristotles-misuse-of-fec-data-subject-of-complaint-98777804.html> (visited on September 10, 2010). Exhibit 1, attached.

Like NGP's first complaint, this one also should be dismissed because the Complaint:

- [illegible]

## SUMMARY

The current Complaint, like its predecessor, alleges that Aristotle's political committee accounting, reporting and data management software violates 2 U.S.C. § 438(a)(4)'s prohibition against the use of information filed in reports with the Commission for the purpose of soliciting contributions or for commercial purposes. However, NGP's allegations are nothing more than speculation arising from its misreading -- and in some cases, outright misrepresentation -- of Aristotle advertisements. The Complaint is not supported by a single factual allegation about the actual use of Aristotle software. This failure alone provides a sufficient basis to dismiss the Complaint.<sup>1</sup>

<sup>1</sup> See Statement of Reasons (“SOR”) of Commissioners Mason, Sandstrom, Smith and Thomas in MUR 4960, Hillary Rodham Clinton for U.S. Senate Exploratory

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Although the advertisements cited in and attached to NGP's Complaint make clear that Aristotle 360 is a sophisticated, technically advanced, integrated political committee software product, NGP makes the misleading assertion that Aristotle is offering a product that consists primarily of the Aristotle 360 Relationship Viewer, and that the Relationship Viewer consists primarily of FEC contributor data that is supposed to be used for creating lists of solicitation targets. This is all false. In fact, the Aristotle 360 Relationship Viewer, which is the subject of NGP's Complaint, is one small feature of Aristotle 360, and the FEC data in the Relationship Viewer is only one type of data in that feature. Dean Phillips Declaration ("Decl.") at ¶¶ 18 and 22b. As discussed below, there is no material difference between CM5 and the Aristotle 360 that would lead to a result different from the disposition of NGP's prior complaint.

Aristotle 360 is a more robust software product for political committees than Campaign Manager 5 software, the subject of the previous NGP complaint and corresponding Commission investigation, MUR 5625. *Id.* at ¶ 12. Like Campaign Manager 5, the Relationship Viewer feature in Aristotle 360 does not obtain the names of individuals from FEC files. *Id.* at ¶ 22. The FEC data available in that feature is only for individuals whose names are already in the client's database. *Id.* Moreover, the FEC data cannot be used to download or export a list of individuals for targeting solicitations, and FEC warnings appear consistently in advance or concurrent with FEC-supplied data. *Id.* at ¶ 19.

Like Campaign Manager 5, there is no evidence, and NGP offers none, that an Aristotle 360 client has used the 360 Relationship Viewer inappropriately. The 360 Relationship Viewer,

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Committee, Inc., at 1-2; SOR of Commissioners Walther, Bauerly and Weintraub in MUR 6096 (Americans for Limited Government) at 2; 72 Fed. Reg. 12545, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (March 16, 2007).

despite NGP's assertion to the contrary, contains a disclaimer that warns users about the inappropriate use of FEC data just like the disclaimer in the compliance/vetting feature in Campaign Manager 5. *Id.* at ¶ 19. NGP claims to speak for campaign contributors and "federal candidates and political committees [that] are among those most threatened" by the 360 Relationship Viewer. Yet in the more than four years that Aristotle 360 has been sold, no federal candidate or political committee, nor any entity other than NGP – a commercial competitor – has complained to the Commission or Aristotle that the Relationship Viewer violated 2 U.S.C. § 438(a)(4). *Id.* at ¶25. Indeed, the legally relevant facts about Campaign Manager 5 are virtually the same in Aristotle 360.

NGP purports to rely on the Statement of Reasons by Commissioners Peterson, Hunter and McGahn in MUR 5625 (the "Controlling SOR") as the principal legal support for its Complaint, arguing that merely using and referring to the use of FEC data in advertisements for a commercial product is a "commercial use" prohibited by 2 U.S.C. § 438(a)(4). Yet, the Controlling SOR in MUR 5625 specifically rejected that argument. The Controlling SOR makes clear that the solicitation use provision of 2 U.S.C. § 438(a)(4) prohibits solicitation of individuals whose identity has been obtained from the reports filed with the Commission, and the commercial use provision of 2 U.S.C. § 438(a)(4) prevents the sale of lists of individuals to persons or organizations who will use those lists to make solicitations where the identities of those individuals have been obtained from reports filed with the Commission, i.e. list brokering. The 360 Relationship Viewer does not obtain the identity of individuals from the FEC files, does not permit the exporting or downloading of lists, and contains FEC warnings. *Id.* at ¶¶ 22, 21 and 19. Aristotle also does not charge extra for access to or inclusion of any FEC data, and the same FEC data is provided for free on Aristotle's website, <http://www.aristotle.com/content/view/419/191>. *Id.* at ¶ 29. Moreover, there are a variety of compelling lawful purposes for providing access to FEC data within Aristotle 360. *Id.* at ¶ 21.

Therefore, under all applicable precedent, including the rationale of the controlling SOR that disposed of NGP's first complaint in MUR 5625, Aristotle 360 does not violate 2 U.S.C. § 438(a)(4).

## **BACKGROUND**

### **1. ARISTOTLE 360**

As the Commission is aware from MUR 5625, Aristotle publishes software, including software for political committees for compliance with federal and state reporting requirements.

*Id.* at ¶¶ 1-6. Throughout Aristotle's 27-year existence, it has participated voluntarily in Commission initiatives, both proactively as well as in response to Commission requests, to modernize and enhance the Commission's reporting function.<sup>2</sup>

Aristotle as an institution has always respected, and continues to respect, the Commission's regulations. FEC reporting compliance, in fact, is a central element of the

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<sup>2</sup> For example:

- 1) The Commission staff has sought, on numerous occasions, input by Aristotle regarding compliance reporting methods. These include credit card fundraising, general reporting, etc.
- 2) The Commission deemed the inclusion of Aristotle so important to the success of the electronic filing efforts that it invited Aristotle to join in the list of companies that offer electronic filing for campaigns, PACs and other organizations.
- 3) The Commission staff has repeatedly benefitted from and sought the input of Aristotle regarding releases of upgraded software by the Commission. On many occasions, the Commission staff has delayed or reworked FEC-supplied software to address errors and omissions by the FEC in the delivery of proper reporting.
- 4) The Commission has hired former Aristotle staff to senior positions within the Commission staff. In discussions with Aristotle regarding an individual, senior Commission staff referred to Aristotle staff as "the most qualified individuals." In one case, the Commission delayed the filling of a position until the Aristotle staff member was able to properly transition from Aristotle to the Commission. <sup>117</sup> The stated goal of that delay was the value of the Aristotle employee to the Commission and the desire not to interrupt filings to the FEC by Aristotle customers.

*Id.* at ¶ 8.

company's business. Its political committee reporting and data management software is nationally recognized as being among the best software because of its accuracy and the assistance that Aristotle staff provides to the political committees to file complete and accurate reports. In fact, Aristotle unconditionally guarantees that its political committee software complies with all federal and state disclosure reporting requirements. The staff provides 24/7 assistance to its customers to resolve questions or problems regarding compliance with the Commission's reporting regulations. *See Decl.* ¶¶ 1-11.

Aristotle began publishing political committee software for state and federal reporting in 1983. *Id.* at ¶ 10. It introduced Aristotle 360 in 2005. *Id.* at ¶ 12. At its core, Aristotle 360's primary function is recordkeeping of contributions and expenditures, generation of accurate compliant reports for filing with the Commission and appropriate state agencies, and data management. *Id.* at ¶ 14. As with Aristotle's other campaign software, such as Campaign Manager 5, Aristotle guarantees that Aristotle 360 prepares reports that comply with the Commission's regulations. *Id.* at ¶ 15. Aristotle 360 is Aristotle's latest and most robust and technically advanced software package for political committees. *Id.* at ¶¶ 12 and 13.

Aristotle 360, like Campaign Manager 5, is only sold by highly trained, experienced sales representatives. *Id.* at ¶ 11. It is not sold in stores and cannot be ordered over the internet. *Id.* The sales staff personally provides an introduction to the software. *Id.* As described in MUR 5625, when the sales staff is selling Aristotle 360, they are instructed to and do explain 2 U.S.C. § 438(a)(4)'s prohibition against the improper use of FEC data for solicitations during sales presentations. *Id.* In addition, all sales contracts require Aristotle's clients to observe the Commission's regulations. *Id.* at ¶ 20.

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Aristotle 360 includes technically advanced data management tools that support political committee activities that are in addition to its core accounting and report generating functions. For comparison purposes, Campaign Manager 5 had over 400 features. *Id.* at ¶ 13. Aristotle 360 has more than twice the functionality of Campaign Manager 5.<sup>3</sup> *Id.* Committees using Aristotle 360 may use these features for management of accounting and government-compliant reporting, committee personnel management, budget management, grass roots organizing, voter identification, GOTV, fundraising management, event planning and communications of all sorts to specialized groups in the committee's database, and generation of any imaginable internal report such as volunteer productivity and compliance with committee policies, to briefing book reports for preparation for meetings. *Id.* at ¶ 16.

Aristotle 360 can be used extensively by separate segregated funds for compliance with FECA, state campaign finance laws, and related regulatory regimes. Access to FEC data is useful to ensure compliance with several non-FECA laws. For example, Aristotle 360 includes a function that allows users to generate reports necessary for compliance with the Lobbying Disclosure Act of 1995 (2 USC 1601) (LDA). *Id.* at ¶ 21. Availability of FEC data within Aristotle 360 allows entities reporting under the LDA to provide confirmation and back-up records for individual lobbyists' LD 203 filings. *Id.* Similarly, Aristotle offers Aristotle 360 as a vetting, recordkeeping, and reporting tool for compliance with MSRB Rule G-37, SEC Rule 206(4)-5, and various state "pay-to-play," lobbying, and procurement laws. *Id.* While these rules are addressed primarily to state and local campaign contributions, they also apply to contributions to state and local political parties (including Federal accounts) and to Federal candidate contributions in cases where state or local officials are seeking Federal office. Many

<sup>3</sup> 40 advanced features in Aristotle 360 are described in Dean Phillips declaration at ¶ 16. Hundreds of others can be described on request.

of these regimes apply to individual firm employees and even in some instances to members of employees' households. *Id.* Again, access to FEC data through Aristotle 360 can be used to facilitate compliance, recordkeeping, and reporting under these important anti-corruption regulations and statutes.

As one would expect in a commercially competitive environment, Aristotle's advertisements for its Aristotle 360 software are designed to grab the viewer's attention, in part, by highlighting its advanced technical capabilities and stressing its unique features.<sup>4</sup> An example of advertising for Aristotle 360 can be found on the Aristotle 360 web page attached to NGP's Complaint.<sup>5</sup> NGP Complaint attached unnumbered exhibit. While some of Aristotle's competitors, who also provide accounting and federal report preparation, may stress other features of their software (e.g., the price), Aristotle stresses (1) its guarantee that its software prepares 100% government compliant reports, (2) its pledge of 24/7 technical support, (3) its generally superior and unmatched technical expertise, and (4) its advanced technical features that none of its competitors provide. *Id.* Thus, the features chosen to be highlighted in the advertising include features that are used by most committees as well as features that are not necessarily frequently-used. Aristotle's view is that showing the advanced features, even if they will be used rarely (if at all), in advertisements grabs the viewers' attention, and appeals to purchasers who want the most technically advanced products, and consequently, increases referrals and questions to Aristotle's sales representatives.

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<sup>4</sup> It is not unusual to advertise high-tech software and hardware products for everyday use by showing advanced technical features in advertisements, even if such features may be used rarely (if ever) by most purchasers.

<sup>5</sup> For reasons only known to NGP, it attached the Aristotle 360 web page without any good-faith effort whatsoever to describe it or place it in context. NGP Complaint at 2 n.2 and attached unnumbered exhibit.



Accordingly, the Aristotle 360 web page attached to NGP's Complaint highlights hand-held (mobile) access, the "Personalized Dashboard," and "Political Data Management," including "stor[ing] volunteer records," "catalogu[ing] ... photos of very important people" to the campaign, "develop[ing] comprehensive infobases on [the campaign's] most important allies and competitors," "creat[ing] and blast[ing] personalized HTML and text e-mail" through email servers that are "White Listed" to avoid flagging the messages as spam, and the ability for selected members of the campaign to "configure personalized heads up display[s] on their home page" that are updated throughout the day, which could include, for example, contribution information, polling results and GOTV activities. This information is prominently displayed on Aristotle's web page describing Aristotle 360 before the 360 Relationship Viewer is even mentioned. *Id.*

The most prominent feature on the 360 web page stresses Aristotle 360's accounting and report generation capabilities by highlighting the compliance guarantee and 24/7 service. *Id.* Indeed, the web site boldly extols the merits of Aristotle 360's ability to create accurate Commission and state reports by reciting Aristotle's guarantee that its reporting software is in "100% full compliance" for such reports. *Id.* This guarantee is emphasized with a large gold graphic and is repeated in an embedded YouTube statement by Aristotle's co-founder and Chief Executive Officer devoted solely to the guarantee. *Id.*

In addition to all of the above features described on the Aristotle 360 description web page attached to the NGP Complaint, there are three points that are linked to other pages. First is a link to a full page devoted entirely to the Compliance Guarantee. *Id.* The last link is to a form to request additional information from a highly trained Aristotle sales representative. The other link is to the Aristotle 360 Relationship Viewer demonstration. Immediately below these last two points are two disclaimers, one of which states:

Any information copied, or otherwise obtained, from any FEC report or statement, or any copy, reproduction, or publication thereof, filed under the Act, shall not be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose, except that the name and address of any political committee may be used to solicit contributions from such committees.

*Id.* Thus, the 360 Relationship Viewer demonstration is included in Aristotle's marketing, but it is done so only after the reader has seen a description of some of the other features of Aristotle 360 and the disclaimer describing the 2 U.S.C. § 438(a)(4) prohibition on the use of FEC data. If the reader is interested in more information about the 360 Relationship Viewer, the reader is required to take the extra step to link to a short description of the 360 Relationship Viewer and its demonstration or, of course, contact a sales representative. *Id.* Thus, Aristotle makes clear on its web site that the 360 Relationship Viewer is an ancillary feature in the Aristotle 360 accounting, reporting and data management software.

Aristotle 360 is not sold in a store or over the internet. Indeed, the only response permitted to the internet advertising is to provide contact information for follow-up by an Aristotle sales representative. *Id.* Thus, anyone interested in purchasing Aristotle 360 receives a full description of the software from the sales representative. Aristotle 360 is such a large sophisticated program that Aristotle's advertising does not attempt to provide a full description, and that is not the purpose of the advertising. The purpose is to pique the interest of political committees and have them ask to talk to one of Aristotle's highly trained sales representatives. Aristotle proudly highlights the 100% guarantee of accurate federal and state reporting, 24/7 technical support, and the technically advanced features that demonstrate Aristotle's emphasis on advanced technical innovations as described above (*see supra* at 8-9). *Id.* But Aristotle's advertising of these advanced features does not alter the heart of the Aristotle 360 software, which is accurate accounting, report generation and overall data management.

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As shown above, the Complaint omits relevant information that reveals NGP's speculations about Aristotle 360 to be misleading. Equally important, the Complaint makes critical assertions that are facially incorrect.

First, NGP incorrectly asserts that: "Aristotle promotes the Relationship Viewer as the lead feature in the Aristotle 360 software," and "Here, Relationship Viewer is the centerpiece of a marketing campaign to new customers." NGP Complaint at 2. However, even its own attachments to its Complaint do not support this assertion.

- For example, the Aristotle 360 web page included as an attachment to the Complaint (but not described or placed in context) describes Aristotle 360 as a complete accounting, reporting and data management program. *See supra* at 8-9. The Relationship Viewer is only described in a link to another page.<sup>6</sup>
- The Complaint also takes out of context a few statements from the Aristotle press release announcing the patent application for the portion of the Aristotle 360 program that provides a relationship feature. Not surprisingly, the press release discusses the Relationship Viewer, which is part of the patent application. But contrary to NGP's claim, the second half of the press release actually promotes features such as the Personalized Dashboard and the Widget Builder. The release also contains a general description of the accounting, reporting and data management features of Aristotle 360, and refers to the entire 360 package as "the most powerful software on the market." The release then links to the Aristotle 360 web page – not the Relationship Viewer web page.

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<sup>6</sup> Not only was it necessary for NGP to have seen the Aristotle 360 web page, but NGP actually attached a copy of that page to its Complaint with a hand-written arrow directing attention to the link to the Relationship Viewer.

- In addition, the Complaint refers to Brian Williams' piece titled "Data-centric Grassroots Organizing" in an effort to support NGP's incorrect assertion that the Relationship Viewer is the heart of Aristotle 360. Complaint at 2. The piece comprises 9 slides in a presentation devoted solely to Aristotle's products for grassroots organizing. The slides do not address raising money from individuals, but in fact emphasize features related to grassroots organizing, such as identifying relationships. Accordingly, software features related to grassroots organizing -- not raising money-- would logically be stressed. Only two of the slides deal with features in 360 (the "Dashboard" and the Relationship Viewer) -- two of Aristotle 360's features that are more useful for grassroots organizing.

Even a biased reader of the material on the Aristotle 360 web page and the other documents attached by NGP could not fairly arrive at NGP's conclusion that the Relationship Viewer is the lead feature of the Aristotle 360 software. At the least, describing the Relationship Viewer web page, while failing to describe the Aristotle 360 web page at all, is highly misleading on NGP's part. The other documents -- a press release announcing the filing of a patent application for the Relationship Viewer and slides for a presentation for grass roots organizing -- are not and do not purport to be general descriptions of Aristotle 360, and do not support NGP's claim.

*Second*, NGP asserts that the Relationship Viewer web page "offers no disclaimer that warns against the use of federal data." NGP Complaint at 3. But NGP necessarily knew that a disclaimer containing that warning appears on the Aristotle 360 web page immediately below the viewer link to the Relationship Viewer demonstration web page. We know this because, on the same page of NGP's attachment to its Complaint of the Aristotle 360 web page, there is a hand drawn arrow on the link to that Relationship Viewer web page a few lines above the FEC

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disclaimer. It thus appears that NGP intentionally misrepresented Aristotle's advertising. This borders on, if not constitutes, a very transparent attempt to deceive the Commission and to misuse its processes to disrupt Aristotle's business.

*Third*, NGP suggests that the Aristotle press release about a patent application is evidence that the Relationship Viewer is of the most important feature of Aristotle 360, and that its use results in a violation of federal law concerning the misuse of Federal contributor data. Complaint at 2. But simply reading the release reveals NGP's error: "The patent covers proprietary technology that enables users to access, mine and *harness contribution records in a manner consistent with the law and for compliance purposes.*" Complaint unnumbered exhibit (emphasis added). Moreover, the only types of data mentioned in the press release for use in soliciting contributions are "detailed state contributor and voter lists with highly accurate consumer databases." *Id.* The release further states that "the software was designed to allow campaigns to comply with Federal Election Commission restrictions and state laws impacting campaigns and contributor databases." *Id.* Furthermore, FEC contributor data is mentioned only three times in the release. The first time, in the fifth paragraph, is in reference to FEC Advisory Opinion 2004-24, which states what may not be done with such FEC data. The only other two references to such data appear at the conclusion of the release. One is the FEC data usage warning, whose inclusion can hardly be construed as evidence of a federal violation. The other is the statement: "There is no increased fee for inclusion or per record usage of such data, and Aristotle's FEC contributor data look-up feature also is available at no charge on Aristotle's website at [www.Aristotle.com](http://www.Aristotle.com)."<sup>7</sup> NGP's attempt to use this release as

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<sup>7</sup> The free contributor data look-up feature at Aristotle's website displays the FEC warning, and advises that the data is for "compliance and vetting." Decl. at ¶ 29.  
<http://www.aristotle.com/content/view/419/191>.

evidence of misuse of Federal contributor data is overblown, misguided, and ultimately, without any merit whatsoever.

*Fourth*, NGP has attached an Aristotle advertisement from *Politics* magazine extolling the use of state – not federal – contributor data for soliciting contributions, and NGP argues that this is evidence of a federal violation. The only mention of FEC data is in reference to FEC Advisory Opinion 2004-24, which states what may not be done with such data. Examination of the front of the attached ad also reveals reference to “FEC & State Compliance.” NGP’s point is lost as to the significance of this advertisement to NGP’s Complaint – but it is a stretch, to say the least, even to offer it as justification for yet another federal investigation, particularly in view of the reasoning in the Controlling MUR.

Finally, and most importantly, as discussed below, NGP’s description of the way the Aristotle’s 360 Relationship Viewer functions is simply incorrect.

## **2. ARISTOTLE’S 360 RELATIONSHIP VIEWER**

The 360 Relationship Viewer is one ancillary feature in the very large and sophisticated Aristotle 360 software. Basically, if a political committee so chooses, it can use the Viewer to uncover relationships between someone in its own database, through the voter file, state campaign reports and the Commission’s files. Of critical importance, like the compliance/vetting feature in Campaign Manager 5, the 360 Relationship Viewer only searches the FEC files for contribution information for individuals already in the committee’s databases; *i.e.*, the 360 Relationship Viewer does not extract the names of individuals from the FEC files. Also of critical importance, and again like the compliance/vetting feature in Campaign Manager 5, the Relationship Viewer results cannot be exported or downloaded. Decl. at ¶ 22.

A search using the actual implemented version of the 360 Relationship Viewer operates as follows:

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- a. A 1<sup>st</sup> degree of separation search can only begin by manually inputting the name of a person who is already in the committee's database ("first person") and then the Relationship Viewer displays search results for that first person from data contained in the voter file, the state campaign reports, the reports filed with the Commission, and the committee's own database.
  - b. The 1<sup>st</sup> degree of separation results include: the identifying information about the first person, names of individuals personally or professionally linked to the first person or with addresses in the vicinity of the first person, and committees who received contributions from any of the above, *none of whose names came from the FEC database*.
  - c. The implemented version of the 360 Relationship Viewer default search setting only provides the 1<sup>st</sup> degree of separation.
  - d. Theoretically, the 360 Relationship Viewer default setting can be changed to provide more than one degree of separation. However, in the more than four years that Aristotle 360 has been available, the default has not been expanded for anyone. Moreover, because changing this default setting requires sophisticated technical expertise, it is highly unlikely a committee would make the change itself. Nor is it likely that a committee would pay someone with the technical expertise to make such a change when Aristotle would do so at no charge. Thus, there is no evidence that any Aristotle client even has the ability to search more than one degree of separation.
  - e. If, *arguendo*, an additional degree of separation search were initiated, the search would begin with the name of an individual from the prior search, which as noted

above cannot come from the FEC files. And, again, to be clear, in any event the search also would never return names or addresses of other individuals derived from the FEC files. In addition, in practice, more than 2<sup>nd</sup> or 3<sup>rd</sup> degrees of separation searches may be impracticable because the results tend to loop back onto themselves.

Decl. at ¶ 22.

In fact, the extent to which any committee may or may not have used the Viewer, or how any committee may or may not have used it, would be mere speculation. The sales staff has reported that clients and potential clients have been impressed by the technological prowess demonstrated by the Relationship Viewer, but they have not indicated that they would necessarily use it. *Id.* at ¶ 23 and 24. There is no indication that anyone purchased Aristotle 360 in order to acquire and use the Relationship Viewer. *Id.* at ¶ 24 - 26. Moreover, NGP has not provided any indication that anyone has used the 360 Relationship Viewer. *Id.* Furthermore, NGP has not provided any evidence (nor has it even speculated) that – in the more than four years that 360 has been on the market – anyone has actually used the Relationship Viewer to obtain and use FEC data inappropriately, and Aristotle knows of none. *Id.* at ¶ 25.

The lack of any evidence that Aristotle 360 has been used inappropriately is not an accident. The 360 Relationship Viewer was specifically designed to prevent its use as a list-making tool. *Id.* at ¶ 26. The following design decisions or consequences of design decisions prevent the Relationship Viewer from being used by committees for an improper purpose:

- Names and addresses of individuals are not obtained from the reports filed with the Commission.



- An on-screen disclaimer warns users that the use of FEC data for solicitation purposes is illegal.
- Searches have to be initiated manually.
- Viewer results cannot be exported or downloaded.
- The implemented software does not automatically provide multiple degrees of separation searches.
- Multiple searches can be performed, but each one has to be initiated manually.
- After two or three such searches, the results tend to loop back onto prior searches. Therefore, the results of multiple degrees of separation searches are limited.
- Viewer results are not made available in list form
- The FEC data is not integrated or matched into the client's database.
- Because the Viewer results are based on relationships, the user cannot search for contributors. For example, the Viewer cannot search for contributors to federal campaigns, for large donors, or who contributes to what kind of candidates. It cannot search for those who have not given the maximum contribution to any candidate or who have not reached their aggregate maximum for the entire election cycle. Thus, unlike lists of individuals sold by list brokers, a committee using the Relationship Viewer does not produce a list of individuals that were not already in the committee's files and does not provide information in downloadable or exportable form.

*Id.*

The controlling Commissioners in MUR 5625 relied on certain salient characteristics of the Campaign Manager 5 ("CM5") compliance/vetting feature to support their conclusion that no violation had occurred. In short, they found that "the feature does not provide any names or

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addresses obtained from the FEC, and as a result, provides no way for a committee to create lists or find new contributors. Indeed, the committee may view a contributor's history only if the committee already has the contributor's name in its database." Controlling SOR at 3. For ease of comparison, the chart below shows the similar salient characteristics between Campaign Manager 5 and the 360 Relationship Viewer:

CMS COMPLIANCE/VETTING	360 RELATIONSHIP VIEWER
<p>"Campaign Manager 5 only provides access to FEC contribution information for individuals whose names and addresses the customer already has in its database. Names and addresses of contributors from FEC records are not provided through Campaign Manager 5. A user therefore cannot obtain a contributor name or address through Campaign Manager 5's FEC data feature." Controlling SOR at 3.</p>	<p>The Relationship Viewer only provides access to FEC contribution information for individuals whose names and addresses the customer already has in one of its own databases, such as its own contributor file or voter file. Names and addresses of contributors from FEC records are not provided through the Relationship Viewer. A user therefore cannot obtain a contributor name or address through the Relationship Viewer's FEC data feature. Decl. at ¶ 21 and 27.</p>
<p>"Federal contribution information obtained from the FEC may be accessed through the software only after the user has identified the individual for solicitation and then manually accessed the specific individual's pre-existing</p>	<p>Federal contribution information obtained from the FEC may be accessed through the software after the user has identified the individual for solicitation and then manually accessed the specific individual's pre-</p>

<p>record from within its own database.”</p> <p>Controlling SOR at 3.</p>	<p>existing record from within its own databases, such as its own contributor file or its voter file. Decl. ¶¶ 21 and 22. In addition, the search results may also provide the names of individuals one degree of relationship away from the first person searched, but none of such additional names come from FEC records. <i>Id.</i></p>
<p>“The information is only made available in a drop-down format on a single record-by-record basis.” Controlling SOR at 3.</p>	<p>The search results only provide one degree of relationships from a single individual identified in the committee’s database.</p> <p>Theoretically, two or three degrees of relationships are possible, but no customer has that capability, and there are no pending requests. Decl. ¶ 22.</p>
<p>“The [FEC] contribution record is not made available in an interactive format or one where the information may be manipulated.”</p> <p>Controlling SOR at 3.</p>	<p>No individual’s FEC contribution record is made available in an interactive format or one where that information may be manipulated, exported or downloaded. Decl. at ¶ 21 and 27.</p>
<p>“Because the FEC data is not matched into the client’s database, the software also does not have the capacity to search FEC records</p>	<p>Because the software does not match the FEC data into the client’s database, the application also does not have the capacity to</p>

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themselves. For example, in this software environment, the user cannot search specifically for large donors or ask the system who gives to what kinds of candidates. Nor can the user utilize the FEC contributor data for any other type of automated data sorting. The user therefore cannot create any kind of lists of solicitation targets based on searches of FEC contribution history.” Controlling SOR at 3.

search FEC records themselves. For example, in this software environment, the user cannot search specifically for large donors or ask the system who gives to what kinds of candidates. Nor can the user utilize the FEC contributor data for any other type of automated data sorting. The user therefore cannot create any kind of lists of solicitation targets based on searches of FEC contribution history. Decl. at ¶¶ 21, 22, and 27.

As demonstrated by this chart, the most salient characteristics identified by the controlling Commissioners in MUR 5625 are present in the 360 Relationship Viewer. In addition, like the compliance/vetting feature, there is no evidence that anyone has used the Relationship Viewer for an improper purpose. *Id.* at ¶¶ 24 -26. Indeed, neither feature appears to have garnered more than incidental use. *Id.* at ¶ 28.

In sum, the 360 Relationship Viewer simply does not produce lists similar to those sold by list brokers, and as described by and prohibited by 2 U.S.C. § 438(a)(4) and all relevant precedent.. In spite of NGP’s speculation about possible uses, there also is no evidence that any committee has used the Relationship Viewer improperly and certainly no one – no contributor and no committee – has complained about any actual inappropriate use.

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The NGP Complaint is nothing more than a misguided and inaccurate critique of Aristotle's advertising, devoid of any actual evidence about the misuse of Aristotle 360 or how the Relationship Viewer actually functions.

In particular, one of NGP's key presumptions, upon which most of its speculation rests, is incorrect. NGP asserted: "One can tell much about a product by how it is marketed. The seller highlights the principal bells and whistles, and doesn't bother with ancillary features." NGP Complaint at 3. NGP's self-proclaimed advertising theory is illogical, incorrect and self-contradictory.<sup>8</sup>

Moreover, as described above, the text of the NGP Complaint ignored the description of Aristotle 360 on its web page (even though someone at NGP or its counsel drew an arrow on a copy of that page attached to its Complaint). Because NGP described the 360 Relationship Viewer by cherry-picking words and phrases from Aristotle's advertising, the Complaint presents inaccurate and significantly misleading speculation about how the Relationship Viewer functions. For example:

- a. NGP suggests that the search results produce the identities of individuals from the FEC files. However, searches cannot be initiated unless the identity of an individual is already in the committee's database, and the search results never provide the identity of individuals from the FEC file.

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<sup>8</sup> NGP provides no citation, and we know of none, that justifies its bald assertion about the application of its personal advertising "theory" to Aristotle's products. Aristotle is entitled to emphasize whatever mix of primary or ancillary features it wishes in order to generate interest in its products, without reference to whether it conforms to NGP's unsupported and illogical theory of marketing. In fact, Aristotle believes the term "bells and whistles" is commonly understood to be the same as features that are "ancillary" to the core product functions. NGP's paradoxical reference to "principal bells and whistles," as supposedly contrasted with "ancillary features," is virtually incomprehensible and is symptomatic of the logical flaws in NGP's overall attempt to create justification for another federal investigation of Aristotle.

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- b. The implemented version of the software is limited to one degree of separation searches unless a committee has the default setting changed, and none has been performed.
  - c. NGP suggests that the Relationship Viewer provides a very large number of relationship results. Even if the search default was increased, searches beyond two or three degrees of separation are not productive or practicable because the results of additional searches tend to loop back onto prior search results and fail to produce new relationships.
  - d. NGP notes that one sentence in one frame of the 16-frame 360 Relationship Viewer demonstration video on the web site incorrectly uses the word "export," which appeared for only a few seconds. NGP has attempted to seize on this to support its theory of "persistent violations of the Federal sale and use prohibition." Complaint at 1. In fact, the software as ultimately implemented does not and never did export or allow downloading of any data, including FEC data, from the Viewer. Accordingly, the Relationship Viewer demonstration video has been removed since this error was noted, and it will be replaced with a corrected version that does not contain the word "export" (or "download" or words of similar meaning). However, it should be noted that even to get to the one fleeting use of the word "export" in one frame of that single advertisement, the FEC warning would appear first. Moreover, *arguendo*, even if FEC data were "exported" from the Viewer one record at a time, there still would be no violation because no names would appear that

are not already in the client's database – i.e. no names from the FEC file would be "exported" – and no lists would be prepared or created.

- e. NGP falsely asserts that the Relationship Viewer does not contain any disclaimers, relying on the Relationship Viewer web demonstration page. However, as already described above, the 2 U.S.C. § 438(a)(4) disclaimer is prominently displayed before the Relationship Viewer web page demonstration can be used. In Aristotle 360, itself, the Relationship Viewer is selected from a screen that contains the following disclaimer:

Any information copied, or otherwise obtained, from any FEC report or statement, or any copy, reproduction, or publication thereof, filed under the Act, shall not be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose, except that the name and address of any political committee may be used to solicit contributions from such committees.

Decl. ¶ 19.

- f. NGP suggests that lists of federal contributors can be automatically created, exported and downloaded into a committee's data base from the Relationship Viewer, and then integrated, sorted and used in mass fundraising appeals. However, none of these assertions is true. Although NGP can be forgiven for its misunderstanding about exporting, due to the error in the text of the demonstration video, Relationship Viewer searches are in fact stand-alone results that cannot be exported or downloaded and, therefore, cannot be integrated or sorted by the user for such impermissible uses.
- g. NGP suggests that it is illegal to provide an aggregated FEC contribution total for an individual over several cycles, as an element of the FEC data shown for an individual who is already in the client's database. There is absolutely no legal

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precedent for such a claim. However, NGP then goes on to admit that "a donor history feature useful for compliance would need to break down past contributions by election cycle, which the Relationship Viewer does not do" Complaint at 5. What NGP does not understand is that such breakdown is precisely what is provided with the individual's full detailed record in the software. Decl. at ¶ 16. But if the Viewer itself does not display *all* available detailed information about an individual, this fact could not possibly make the display of aggregated contributions in the Viewer a federal violation under any applicable legal precedent or standard. Yet, this is precisely what NGP is urging the Commission to view as conduct necessitating another federal investigation.

The thrust of NGP's incorrect speculations is that political committee clients of Aristotle use the Relationship Viewer to export lists of contributors from the Commission's files and then solicit those individuals. However, there is no evidence that they have done so or even could do so, given the design of the feature. See Decl. ¶¶ 24 - 26.

#### DISCUSSION

##### 1. Aristotle 360 Does Not Violate 2 U.S.C. § 438(a)(4)

The legislative and administrative history and judicial decisions relating to 2 U.S.C. § 438(a)(4) have been exhaustively described in the MUR 5625 SORs, and therefore, there is no need to repeat them here. In short, the controlling SOR summarized the "statute, the regulation, and the legislative history," as follows: "Congressional concern centered on two specific problematic uses of disclosed information: (1) that list brokers would simply copy the names of contributors directly from the reports and then sell those names to third parties for solicitation purposes; and (2) that commercial businesses would solicit political contributors to a degree that could constitute harassment. Thus, as Aristotle correctly observes, 'Congress intended the term "for



commercial purposes" to apply to the sale of lists of names by list brokers for purposes of prospecting and targeted soliciting." *Id.* at 8 (footnote omitted). The Controlling SOR also concluded that: "The legislative history, court decisions, and Commission enforcement actions appear to demonstrate that the statute does not constitute a *per se* rule against any commercial use of FEC data. Rather the application of 2 U.S.C. §438(a)(4) has consistently been limited to the sale and use of contributor names and contact information to prevent list brokering." *Id.* at 12. Specifically, the Controlling SOR found that the use of information from reports filed with the Commission in a commercial product and reference to that use in advertisements for that product is not a *per se* violation of the "commercial use" provision of 2 U.S.C. § 438(a)(4).<sup>9</sup> *Id.* at 2, 6, 11, 12.

When the Commissioners applied the law to the facts uncovered in the investigation in MUR 5625, one fact appears to be controlling. "Aristotle is not copying names and addresses from FEC reports and selling them to its customers. The compliance/vetting feature only provides the contribution history of those already in a customer's existing data base. And since Aristotle is not selling new names and contact information, there is no threat of 'all kinds of harassment' that was of concern when this amendment was adopted." *Id.* at 8 (footnote omitted). They also noted that: "It is difficult to imagine that the sale of data that is already publicly available and that is presented in such a way that it cannot lead to contributor harassment, is the sort of "commercial purpose" contemplated by Congress. Indeed, when this amendment was

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<sup>9</sup> The "solicitation" prohibition provision of 2 U.S.C. § 438(a)(4) does not apply here because Aristotle has not been alleged to have made any solicitations. Even NGP's Complaint confirms this, by alleging in its somewhat tortured conclusion that "Aristotle's 'commercial use' of FEC data occurs when new clients purchase the Aristotle 360 product, since it is clear that a key part of what Aristotle is selling, and what these customers are buying, is access to FEC donor history data through the Relationship Viewer feature." Complaint at 5-6.

adopted in 1971, no one could have anticipated the technological advances that would evolve over the next 40 years, including, most notably, the impact of the Internet.” *Id.* n. 33.

The same controlling fact exists here. As described above, the 360 Relationship Viewer does not provide names from the FEC reports; it only provides the contribution history of those individuals that are already in the committee’s databases.

The Controlling SOR also described other secondary factors that distinguished the compliance/vetting feature in Campaign Manager 5 with the violative conduct found by the court in *FEC v. Legi-Tech*, 967 F. Supp. 523 (D.D.C. 1997). *Id.* at 10. Those same factors apply to the 360 Relationship Viewer. The Relationship Viewer is one feature in a software package that includes many hundreds of features. There are compliance and other legitimate uses of the Relationship Viewer. The Viewer “does not provide the names or contact information for any contributor” from the FEC files. *Id.* “[T]he user may only search for contributions for a person whose name and address the user already possessed.” *Id.* Because the results are not downloadable or exportable, “it is impracticable for Aristotle’s customers to create [solicitation targeting] lists” using the Relationship Viewer.” *Id.* “Finally, there is no evidence that Aristotle’s customers misused” the information provided by the Relationship Viewer. *Id.*

Accordingly, for the same reason that the compliance/vetting feature in Campaign Manager 5 does not violate 2 U.S.C. § 438(a)(4), neither does the 360 Relationship Viewer.

**2. There Is No “Commercial Use” Of The 360 Relationship Viewer Search Results Because The FEC Data Is Not Provided For A Fee**

Anyone can obtain the same FEC contribution information found on the 360 Relationship Viewer for free for any individual by going to Aristotle’s web site, [www.Aristotle.com](http://www.Aristotle.com), clicking on the Political Data tab, the Political Data Lookup Feature, and entering the name of the individual to be searched. Decl. at ¶ 28.

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The Controlling SOR in MUR 5625 noted that the Commission has dismissed MURs where respondents made FEC data available on their web sites for free. Controlling SOR in MUR 5625 at 11. In MUR 5155 (PoliticalMoneyLine), the respondent, like Aristotle, had two services: one for free and one for a charge. "In addressing the subscription service, the Commission stated that it simply provided the same information a person could get for free, even though it was provided in a format that could be used more efficiently." *Id.* (footnote omitted). These dismissals were based, in part, on the recognition that there is no "commercial purpose" when there is no charge for the data. *Id.* Aristotle does not charge extra for the Relationship Viewer or access to the FEC data. The cost of the software is the same whether the FEC data is accessed or not, and whether the Relationship Viewer is ever used or not. Decl. at ¶ 28.

"A more permissive interpretation of a statutory provision or regulation by the Commission precludes the Commission from subsequently interpreting the same provision or regulation less permissively in an enforcement matter unless and until the agency provides the public with sufficient notice of its intent to do so and an explanation thereof (sic)." Controlling SOR in MUR 5625 at 12 (citation omitted). Thus, for the same reason stated in MUR 5155, the Commission should dismiss NGP's Complaint because there is no commercial use.

**3. NGP Has Provided No Evidence That Aristotle 360 Violated 2 U.S.C. § 438(a)(4)**

NGP makes a number of erroneous arguments based solely on speculation and misstatements that are addressed below in the order raised by NGP.

**a. The Relationship Viewer Is Not The Focal Point Of Aristotle 360 Or The Focus Of Its Marketing Efforts**

As already described above, NGP incorrectly asserts that the Relationship Viewer is the focal point of Aristotle 360 and the focus of Aristotle's marketing efforts. The 360 Relationship Viewer is an ancillary part of a large sophisticated program, but as a technological

advancement, it does grab people's attention and directs them to Aristotle's sales staff. See discussion. *Supra* at 8-10, 21 n.8.

In addition, NGP makes the incorrect legal assertion that the Relationship Viewer meets the "standard set out in FEC v. Political Contributions Data." NGP Complaint at 6. However, as the Controlling SOR in MUR 5625 explained "the 'principal purpose' of [Political Contributions Data's] reports was something other than a 'commercial purpose,' because the absence of any contact information in the reports, such as the contributors' addresses and phone numbers made it 'virtually certain' the reports would be used for informational purposes and not for commercial purposes." Controlling SOR at 8-9 citing *FEC v. Political Contributions Data, Inc.*, 943 F.2d 190, 197 (2<sup>nd</sup> Cir. 1991). Thus, even if the Relationship Viewer were a stand-alone product, it would not violate 2 U.S.C. § 438(a)(4) under the 2<sup>nd</sup> Circuit's criteria because it does not download "contact information" from the FEC's files or any other source, nor does it provide information in downloadable or exportable form suitable for list-making.

**b. The Relationship Viewer Does Not Offer FEC Data To Create Lists of Solicitation Targets**

As previously described, NGP incorrectly speculates that FEC contributor identification information is downloaded from the FEC files and exported from the Relationship Viewer to Aristotle 369 users without any disclaimers. All of these assumptions are incorrect. For the same reason, the hypothetical example presented in the NGP Complaint at 4 is incorrect. For the Commission's convenience, the chart below compares the speculation in NGP's hypothetical with the actual results of a 360 Relationship Viewer search.

NGP Hypothetical Example	Actual Relationship Viewer Capabilities
"Federal Candidate Jones believes employees	So far, the theoretical committee has not used

of Dunder Company might be prospects, finds a list of 100 company employees on the web (including CEO John Smith), and loads them into his Aristotle 360 database. Smith, the Dunder CEO, has no previous relationship with the Jones Campaign, and has made no contributions to the Jones Campaign.”

Aristotle 360 in its search.

“The Jones Campaign looks up an individual who works at Dunder. Relationship Viewer then pulls data derived from FEC reports and shows that CEO Smith is displayed as having made a \$1,000 contribution to Congressman John Boehner.”

The Relationship Viewer user cannot look up Dunder or Dunder employees in the FEC data base. The user can only look up one individual at a time, and the user must have that individual’s name before initiating the search that may return contribution history from the FEC database, but no other FEC data for that person is returned. The result of the search may also include individual contribution histories for the individual and those within one relationship degree, but no names or other information derived from the FEC’s records are displayed. In NGP’s example, if CEO Smith’s name and contribution history were to appear, his name would not have been derived

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	from the FEC's database. (Other web sites have this capability). Decl. ¶30.
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<p><b>"Of the other 100 Dunder employees, 10 have made Federal contributions that show on the Relationship Viewer (none of whom have contributed to the Jones campaign)."</b></p>	<p><b>The Relationship Viewer user cannot look up Dunder and find Dunder employees in the FEC data base. The user can only look up one individual at a time, and the user must have that individual's name before initiating the search that may return contribution history from the FEC database, but no other FEC data for that person is returned. The result of the search may include individual contribution histories for the individual and those within one relationship degree, but no names or other information derived from the FEC's records are displayed . In NGP's example, if Dunder employees' names and contribution history were to appear, their names would not have been derived from the FEC's database. Decl. at ¶ 30.</b></p>
<p><b>"The Jones Campaign exports the Relationship Viewer information, and targets Smith and the other 10 Federal contributors for solicitation."</b></p>	<p><b>The user cannot export information from the Relationship Viewer. See Section 3 below.</b></p>

	<p>A disclaimer that warns users about the 2 U.S.C. § 438(a)(4) prohibition appears on the computer screen before anyone can access the Relationship Viewer. Decl. at ¶19.</p>
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Thus, as a factual matter, the hypothetical situation in the NGP Complaint is not only speculative, it is based on a factually incorrect premise.

**c. The Relationship Viewer Does Not Allow Exporting Or Downloading Of FEC Donor Data.**

As described above, NGP relies on one sentence in one frame of the 16-frame 360 Relationship Viewer demonstration that incorrectly uses the word "export." In fact, the software as ultimately implemented does not and never did export or allow downloading of any data, including FEC data, from the Viewer. Accordingly, the Relationship Viewer demonstration video has been removed since this error in that one frame was noted, and it will be replaced with a corrected version that does not contain the word "export" (or "download" or words of similar meaning). However, it should be noted that even to get to the one fleeting use of the word "expert" in one frame of that single advertisement, the FEC warning appeared first. Moreover, *arguendo*, even if FEC data were "exported" from the Viewer one record at a time, there still would be no violation because no names would appear that are not already in the client's database, no names would be "exported" from the FEC file, and no lists would be prepared or created. Decl. at ¶¶ 21-26.

**d. The FEC Data Available Through the Relationship Viewer Is Useful For Many Legal Purposes Including Compliance And Vetting**

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NGP's inaccurate speculation about the Relationship Viewer led it to the incorrect conclusion that the search results could not be used for lawful purposes. In fact, because the Relationship Viewer returns the same FEC data for the individual searched as the compliance/vetting feature in Campaign Manager 5, it has the same compliance and vetting capability that any access to FEC data would have. As described above, there are a variety of regulatory and compliance purposes for which access to FEC data is both legitimate and necessary, some of which are discussed above. *Supra* at 7-8; Decl. ¶ 20. If this were not true, then NGP must ask the Commission to presume that every download of FEC data from the FEC or from any of numerous other sources, is illegal. Yet as the Controlling SOR and precedent cited therein show, the FEC will make no such presumption, and should not do so here, when no names are provided from FEC files and the Viewer provides no list-making capabilities.

As shown above, the Relationship Viewer cannot be used to violate 2 U.S.C. § 438(a)(4), and NGP has provided no evidence that anyone has used the Relationship Viewer for an inappropriate purpose.

**e. The Relationship Viewer Does Not Violate The Intellectual Property Of Candidates Or Committees**

Finally, NGP makes the alternative legal argument that the "Relationship Viewer substantially diminishes the marketability of [federal candidate's and political committee's] valuable donor lists," which violates 2 U.S.C. § 438(a)(4). NGP Complaint at 6. This rationale is not found in the legislative history or the Commission's precedents. Presumably, it is based on



an alternative rationale *FEC v. International Funding Institute, Inc.*, 969 F.2d 1110 (D.C. Cir. 1992) ("*IFI*"), which has not been adopted by the Commission.

However, as the Controlling SOR noted, the *IFI* court upheld "the constitutionality of the sale or use provision, stating that 'it does not prevent one from soliciting a person who is on a committee's contributor list, so long as one does not obtain that person's name (directly or indirectly) from a list filed with the FEC.'" Controlling SOR at 9 n. 38 quoting *IFI*, 969 F.2d at 1118.<sup>10</sup>

Thus, the Relationship Viewer search, which does not produce names from the FEC's file, has the characteristics of a permissible use of FEC data as described by the *IFI* court. Significantly, in the more than four years that Aristotle 360 has been sold, no candidate or committee has complained that Aristotle 360 infringes on their intellectual property in their contributor lists. Decl. at ¶24.

Accordingly, NGP's last argument also fails to describe a violation of 2 U.S.C. § 438(a)(4).

**4. NGP's Allegations Based Upon Commercial Advertising Is Not A Substitute For Actual Violative Activity Under the Act**

NGP's Complaint fails to meet the legal requirements for the finding of a reason-to-believe-a-violation-has-occurred finding ("RTB") by the Commission. RTB has not been legislatively defined, but, at the very least, it requires evidence upon which to make a finding.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA. Complaints based upon personal knowledge must identify a source of information that reasonably gives to a belief in the truth of the allegations presented. See 11 CFR 11.1.4(d)(2); MUR 4545

<sup>10</sup> The *IFI* court actually goes farther, noting that 2 U.S.C. § 438(a)(4) allows use of FEC data "to seek popular support for a particular policy, or to solicit signatures on a petition, or to urge recipients not to contribute to a rival cause..." See *IFI*, 969 F.2d at 1116-1118.

(Clinton/Gore '96 Primary Comm./Amtrak) ("While the available evidence is inadequate determine whether the costs of the Train Trip were properly paid, the complainant's allegations are not sufficient to support a finding of reason to believe . . . ."); MLTR 3534 (Bibleway Church of Atlas Road) ("[T]here was a lack of evidence indicating the literature was distributed on behalf of the [Respondent] or at its expense.").

Unwarranted legal conclusions from asserted facts, see SOR in MUR 4869 (American Postal Workers Union), or mere speculation, see SOR of Chairman Wold and Commissioners Mason and Thomas in MUR 4850 (Fossella), will not be accepted as true. In addition, while credibility will not be weighed in favor of the complainant or the respondent, a complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in the response to the complaint, see MUR 4852 (Wiebe), or available from public sources such as the Commission's reports database.

SOR of Commissioners Mason, Sandstrom, Smith and Thomas in MUR 4960, Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc., at 1-2 (footnote omitted). "Rather than finding reason to believe, the Commission may vote to dismiss matters at the initial stages of an enforcement matter 'due to factors such as the small amount or significance of the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an investigation.'" MUR 6096 (Americans for Limited Government) SOR of Commissioners Walther, Bauerly and Weintraub at 2 (footnote omitted). *See also* 72 Fed. Reg. 12545, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (March 16, 2007).

NGP's Complaint offers no evidence. It uses speculation and outright misrepresentation as "evidence" to suggest (using words such as "allows" and "markets") that Aristotle 360 clients could have used FEC data improperly, but the Complaint never actually even speculates that anyone has improperly used FEC data. NGP's sole basis for its conclusion that a violation occurred is speculation based on an incorrect understanding of Aristotle's advertisements, plus

one incorrect word appearing in one Aristotle video. However, statements in advertisements and speculation based upon such advertisements are not a substitute for the necessary presentation of evidence in a notarized complaint to support an RTB finding by the Commission pursuant to 2 U.S.C. § 437g(a)(1) and (2).

In MUR 5625, the General Counsel's recommendation to find probable-cause-to-believe ("PCTB") a violation occurred was premised, primarily, on Aristotle's advertising and a theoretical use of the compliance/vetting feature found in Campaign Manager 5. Although the controlling SOR did not explicitly reject the General Counsel's reliance on advertising instead of evidence of improper use of FEC data, it noted the absence of any evidence that any Campaign Manager 5 user had inappropriately used the compliance/vetting feature to solicit contributors, Controlling SOR at 13, and would have voted to dismiss the complaint as a matter of discretion in spite of the advertisements offered by the General Counsel as evidence of violative conduct.

The same evidentiary problem is evident in NGP's Complaint. Even though an RTB finding requires less evidence than a PCTB finding, some evidence is necessary. NGP has not provided any evidence whatsoever that the 360 Relationship Viewer was used inappropriately to solicit contributions, or that Aristotle has marketed the FEC data in the Viewer to be used unlawfully. Speculation does not provide an evidentiary foundation for a RTB finding by the Commission. See SOR of Commissioners Mason, Sandstrom, Smith and Thomas in MUR 4960, Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc., at 1-2; SOR of Commissioners Walther, Bauerly and Weintraub in MUR 6096 (Americans for Limited Government) at 2; 72 Fed. Reg. 12545, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (March 16, 2007). Accordingly, the Commission should dismiss the Complaint.

**5. The Law Is At Best Unclear and Should Be Clarified By Rulemaking**

In May 2009, the Commission was unable to agree on the application and construction of 2 U.S.C. § 438(a)(4) in MUR 6096 (Americans for Limited Government Research Foundation), and the Commissioners issued two well-reasoned SORs describing incompatible views of the application of the law. Aristotle's Response to the General Counsel's Brief in MUR 5625 described the many contradictory statements in the Commission's advisory opinions and other MURs construing 2 U.S.C. § 438(a)(4). If there was any doubt before MUR 5625 that the law construing 2 U.S.C. § 438(a)(4) was muddled and contradictory with respect to the exact issue raised in NGP's Complaint, that question was answered by the two well-reasoned SORs in that MUR, which came to opposite conclusions.

The NGP Complaint raises the exact same legal issue concerning the application and construction of 2 U.S.C. § 438(a)(4) that the Commission could not resolve in MUR 5625. If the Commission itself cannot agree on the application of 2 U.S.C. § 438(a)(4) to the same legal issue raised both of NGP's complaints, then it would not be fair to expect Aristotle or any other member of the regulated community to understand and be able to conform to the Commission's position. Accordingly, the Commission should "decline[] to engage in rulemaking *via* MUR here" as it has recently and in several other matters. MUR 6206 (BASF Corp.) SOR by Commissioners Peterson, Hunter and McGahn at 2 citing other MURs. Now is the time to dismiss this MUR and not "spen[d] four years worth of resources," MUR 5625 Controlling SOR at 13, to arrive at a point where the application of 2 U.S.C. § 438(a)(4) is again, at best, still unclear.

Accordingly, the Commission should exercise its prosecutorial discretion and dismiss the Complaint pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

**6. The Commission Should Exercise Its Prosecutorial Discretion Because NGP Has Not Even Alleged That Anyone Has Used The Aristotle 360 Relationship Viewer For An Improper Purpose**

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As noted in the Controlling SOR in MUR 5625, it is appropriate for the Commission to exercise its prosecutorial discretion to dismiss a complaint where, among other things, "[t]here is no evidence that data was used in a manner inconsistent with the purpose of the sale or use prohibition." Controlling SOR at 2. "Even assuming soliciting people already found in a pre-existing list is an impermissible solicitation purpose (which is the only possible way that Aristotle's product could have been misused), as OGC acknowledged, there was no evidence that any of Aristotle's customers attempted to create a list or solicit contributions using FEC data. Thus, any violation was, at most, technical, and 'an agency generally cannot act against each technical violation of the statute it is charged with enforcing.'" *Id.* at 13 (footnotes omitted). More recently, a majority of the Commission noted that that, even if violative conduct was a hypothetical possible result of an allegation in a complaint, the lack of any actual alleged violative conduct, "although not dispositive to our analysis," was a factor in the Commission's decision to dismiss the complaint as a matter of prosecutorial discretion. MUR 6124 (SEIU and SEIU COPE) SOR at 5.

Here, there is not even an allegation, much less evidence, that anyone used the 360 Relationship Viewer for an impermissible purpose, even though Aristotle 360 has been sold for more than 4 years. Accordingly, Aristotle asks the Commission to dismiss the complaint as a matter of prosecutorial discretion pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

**7. The Commission Should Exercise Its Discretion To Prevent An Abuse Of Its Processes**

Normally the motives of the complainant are irrelevant to the Commission's enforcement determinations. As noted in the controlling SOR in MUR 5625, the Commission is required to respond to advisory opinion requests even if the motive of the requestor is suspicious. SOR at 5 n.

21. However, this is an unusual, if not unique, situation where the Commission should dismiss a complaint as an exercise of its discretion pursuant to *Heckler v. Chaney*, 470 U.S. 821(1985).

The current NGP Complaint is the latest act in a long running dispute between commercial competitors that has been going on as long as they have been competing for business from political committees. This is the third time NGP has asked the Commission to intervene in that dispute by construing a feature of Aristotle's political campaign software as violating 2 U.S.C. § 438(a)(4). The first time, NGP submitted a request for an advisory opinion that was designed to cause the Commission to conclude that Aristotle's compliance/vetting feature violated 2 U.S.C. § 438(a)(4).<sup>11</sup> Thereafter, NGP submitted a complaint that Aristotle was violating 2 U.S.C. § 434(a)(4) by making contribution history available in non-list form. Both of those attempts failed. The current Complaint raises the same issue: that Aristotle's political committee software violates 2 U.S.C. § 438(a)(4) ) by making contribution history available in non-list form. If the Commission were bound by judicial rules, the Complaint could be barred by the doctrines of *res judicata* or collateral estoppel.

The federal courts have traditionally adhered to the related doctrines of *res judicata* and collateral estoppel. Under *res judicata*, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. As this Court and other courts have often recognized, *res judicata* and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.

*Allen v. McCurry*, 449 U.S. 90, 94 (1980) (citations and footnote omitted). The same principles underlying these doctrines apply here, even if they do not apply in other MURs involving

<sup>11</sup> See Controlling SOR at 5 n. 21 ("certainly, one can circumstantially draw that conclusion").



complaint pursuant to *Heckler v. Chaney*, 470 U.S. 821(1985).

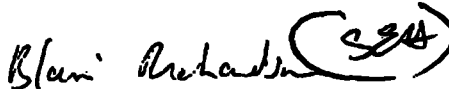
### CONCLUSION

In view of the above, Aristotle International, Inc. requests that the Commission dismiss MUR 6334 and close the file.

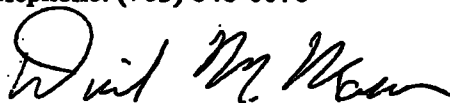
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Counsel for Aristotle International, Inc.

September 13, 2010



**BEFORE THE FEDERAL ELECTION COMMISSION**

IN THE MATTER OF

ARISTOTLE INTERNATIONAL, INC.

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MUR 6334

**DECLARATION OF DEAN A. PHILLIPS**

I, Dean A. Phillips, president of Aristotle International, Inc. declare to the best of my memory that:

**BACKGROUND**

1. For over 27 years, Aristotle International, Inc. (Aristotle") has been in the business of publishing campaign management software and public record information for lawful uses.
2. Aristotle is nonpartisan, with clients across the ideological spectrum.
3. Aristotle's stated corporate missions include (a) publishing information used to influence political campaigns, elections, and public policy matters; and (b) increasing, in any media, the quality of information reaching the body politic and furthering the goal of the First Amendment to the Constitution of the United States of America of producing an informed public capable of conducting its own affairs.
4. Aristotle's primary publications include computer software for political committees that enable those committees to maintain accurate records of their contributions and expenditures, and to file reports with the Commission that accurately reflect those contributions and expenditures.
5. During the last 27 years, Aristotle has continued to improve and upgrade its software to comply with new Commission regulations and to increase the efficiency and ability of its

customers to conduct a campaign, maintain accurate records and file reports on paper and electronically.

6. Aristotle's political committee software is nationally recognized as being among the best, if not the best, software because of its accuracy, and assistance that Aristotle staff provides to the political committees to file complete and accurate reports.
7. Aristotle unconditionally guarantees that its political committee software complies with all federal and state disclosure requirements.
8. The Commission itself on frequent occasions has relied on Aristotle to provide feedback and advice about changes that the Commission makes to its own political committee filing software and has hired Aristotle-trained staff because of their expertise. For example:
  - a. The Commission staff has sought, on numerous occasions, the input by Aristotle regarding compliance reporting methods. These include credit card fundraising, general reporting, etc.
  - b. The Commission deemed the inclusion of Aristotle so important to the success of the electronic filing efforts that it invited Aristotle to join in the list of companies that offer electronic filing for campaigns, PACs and other organizations.
  - c. The Commission staff has repeatedly benefitted from and sought the input of Aristotle regarding releases of upgraded software by the Commission. On many occasions, the Commission staff has delayed or reworked FEC-supplied software to address errors and omissions by the FEC in the delivery of proper reporting.
  - d. The Commission has hired former Aristotle staff to senior positions within the Commission staff. In discussions with Aristotle regarding an individual, senior Commission staff referred to Aristotle staff as "the most qualified individuals." In

one case, the Commission delayed the filling of a position until the Aristotle staff member was able to properly transition from Aristotle to the Commission. The stated goal of that delay was the value of the Aristotle employee to the Commission and the desire not to interrupt filings to the FEC by Aristotle customers.

9. Aristotle as an institution has always respected, and continues to respect, the Commission's regulations. The Company goes to extraordinary lengths to comply with the Commission's regulations, and it assists its customers with their compliance with the regulations. FEC compliance, in fact, is a central element of the company's business.
10. Aristotle published its first version of the political committee software in 1983. These programs have been continuously updated to assist political committees in such essential management functions as generating FEC and state reports, tracking contributions and expenditures, compliance with federal and state rules, fundraising, and general campaign organization.
11. Aristotle political committee software, including Aristotle 360, is only sold by highly trained, experienced sales representatives. It is not sold in stores and cannot be order over the internet. The sales staff personally provides an introduction to the software.

#### **ARISTOTLE 360**

12. Aristotle 360 was introduced in 2005 and has been sold concurrently with its less expensive and less sophisticated brother Campaign Manager 5, which was issued in 2004. Campaign Manager 5 ("CM5") is the software that was the subject of MUR 5625.
13. Aristotle 360 is a much more robust program than CM5. For example, While CM5 includes more than 400 features, Aristotle 360 has more than twice the functionality of CM5.

14. Aristotle 360's main purpose, like CM5, is to allow political committees to efficiently and accurately manage and account for contributions and disbursements to permit committees to file federal and state compliant financial disclosure reports and to manage their data.

15. Prominently displayed in Aristotle's advertising and stressed by its sales representatives is Aristotle's guaranty that the federal and state reports are 100% compliant with federal and state law. Also important is Aristotle's customer service line, which is available 24/7 to answer questions and respond to client problems. *See, e.g.* Aristotle 360 web site page attached to NGP's Complaint and the Aristotle 360 web page at [www.Aristotle.com/content/view/28/62](http://www.Aristotle.com/content/view/28/62).

16. In addition to accurate reporting, Aristotle 360 provides, among others, the following functions:

- a. create specialized lists from the committee's databases
- b. search of the committees databases
- c. conduct of effective e-campaigns
- d. processes credit card contributions
- e. efficiently organize events
- f. import contributions collected through Aristotle's online campaign contributions network
- g. import voting history and update contact information of registered voters
- h. event management
- i. manage activities, including emailing and web presence directed to specialized databases culled from the committee's database
- j. reformat the committee's databases to conform to vender requirements
- k. manage fundraisers, including volunteers, employees and vendors

- l. issue advocacy mail and email to specialized lists
- m. email and mail "calls to action" to write to an elected official
- n. manage blast emails
- o. import voter lists by district
- p. create contact lists, emails and mailings from voter files, including mail merges
- q. track election day activities
- r. use voter files for GOTV
- s. email and mail invitation lists and follow-up responses
- t. manage virtual events such as internet meetings
- u. create a web site
- v. monitor web site activity
- w. monitor and manage internet contribution
- x. create communications to a corporate or union eligible class
- y. create unlimited specialized email lists and special messages emailed to those lists
- z. perform compliance/vetting of contributions and contributors
- aa. create individualized home pages
- bb. create individualized "dash boards" that provide real time data of information in the database.
- cc. create unique and standard management reports
- dd. create a "briefing book" report containing information in the committee's database about an individual in preparation for a meeting with that individual.
- ee. hand held access to data
- ff. enhancement of contacts from voter files

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#### hh. federated access processing to allow organizations to segment data access

**jj. automated data loading from local and remote data stores**

**11. API and SDK access to allow outside developers access to systems and functions.**

## nn. check request processing and request management

**pp. user manageable security**

**rr. contribution history summaries, that are displayed in the individuals full detailed record, include contributions by year or election cycle.**

ss. use a relationship viewer, which is the sole subject of the NGP complaint, is described in detail below.

17. In sum, while Aristotle 360 is used by political committees primarily to account for campaign contributions and disbursements, and to prepare and file reports with the Commission, it provides tools to run and manage a complete candidate or grassroots issue campaign.

## 360 RELATIONSHIP VIEWER

18. The 360 Relationship Viewer is one small feature in Aristotle 360 that is not necessary for the other features to function.

19. The Relationship Viewer is selected from a screen that contains the following

disclaimer:

Any information copied, or otherwise obtained, from any FEC report or statement, or any copy, reproduction, or publication thereof, filed under the Act, shall not be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose, except that the name and address of any political committee may be used to solicit contributions from such committees.

FEC warnings appear consistently in advance or concurrent with FEC supplied data.

Moreover, Aristotle's contracts prohibit Aristotle's customers from using its software in any manner that violates the campaign finance laws and regulations, and the contracts prohibit customers from modifying the software's computer code.

20. Aristotle 360 can be used by separate segregated funds for compliance with FECA, state campaign finance laws, and related regulatory regimes. Access to FEC data is essential to ensure compliance with several non-FECA laws. For example, Aristotle 360 includes a function that allows users to generate reports necessary for compliance with the Lobbying Disclosure Act of 1995 (2 USC 1601) (LDA). Availability of FEC data within Aristotle 360 allows entities reporting under the LDA to provide confirmation and back-up records for individual lobbyists' LD 203 filings. Similarly, Aristotle offers Aristotle 360 as a vetting, recordkeeping, and reporting tool for compliance with MSRB Rule G-37, SEC Rule 206(4)-5, and various state "pay-to-play," lobbying, and procurement laws. While these rules are addressed primarily to state and local campaign contributions, they also apply to contributions to state and local political parties (including federal accounts) and to Federal candidate contributions in cases where state or local officials are seeking Federal office. Many of these regimes apply to individual firm employees and even in some instances to

members of employees' households. Again, access to FEC data through Aristotle 360 can be used to facilitate compliance, recordkeeping, and reporting under these important anti-corruption regulations and statutes.

21. The 360 Relationship Viewer cannot and does not search the reports filed with the Commission unless the committee already has the name and address of an individual. The search results cannot be exported or downloaded. Aristotle 360 does not integrate the Relationship Viewer search results into any other part of the software. Moreover, the FEC data cannot be used to create, download or export a list of individuals for targeting solicitations, and FEC warnings appear wherever the data appears. Aristotle 360 cannot sort or otherwise manipulate FEC data. A search using the implemented version of the 360 Relationship Viewer operates as follows:

- a. A 1<sup>st</sup> degree of separation search can only begin by manually inputting the name of a person who is already in the committee's database ("first person") and then the Relationship Viewer displays search results for that first person from data contained in the voter file, the state campaign reports, the reports filed with the Commission, and the committee's own database.
- b. The 1<sup>st</sup> degree of separation results include: the identifying information about the first person, names of individuals personally or professionally linked to the first person or with addresses in the vicinity of the first person, and committees who received contributions from any of the above, none of whose names came from the FEC database.
- c. The implemented version of the 360 Relationship Viewer default search setting only provides the 1<sup>st</sup> degree of separation.

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- d. Theoretically, the 360 Relationship Viewer default setting can be changed to provide more than one degree of separation. However, in the more than four years that Aristotle 360 has been available, the default has not been expanded for anyone. Moreover, because changing this default setting requires sophisticated technical expertise, it is highly unlikely a committee would make the change itself. Nor is it likely that a committee would pay someone with the technical expertise to make such a change when Aristotle would do so at no charge. Thus, there is no evidence that any Aristotle client has the ability to search more than one degree of separation.
- e. If, *arguendo*, an additional degree of separation search were initiated, the search would begin with the name of an individual from the prior search, which as noted above cannot come from the FEC files. In addition, in practice, more than 2<sup>nd</sup> or 3<sup>rd</sup> degrees of separation searches may be impracticable because the results tend to loop back onto themselves.

22. The sales staff has reported that clients and potential clients have been impressed by the technological prowess demonstrated by the Relationship Viewer, but they have not indicated that they would have a use for it. Moreover, there is no indication that anyone purchased Aristotle 360 to acquire and use the 360 Relationship Viewer.

23. I have not seen any indication that anyone is using the Relationship Viewer.

24. No federal candidate or political committee nor any entity other than NGP, a commercial competitor, has complained to the Commission or Aristotle that Aristotle 360 or the Relationship Viewer violated 2 U.S.C. § 438(a)(4). I do not know of any customer who has used FEC data inappropriately.

25. During periods when the relationship viewer has been inactive few or no requests for its repair were received.

26. The 360 Relationship Viewer is specifically designed to prevent its use as a list-making tool.

In particular:

- Names and addresses of individuals are not obtained from the reports filed with the Commission.
- An on-screen disclaimer warns users that the use of FEC data for solicitation purposes is illegal.
- Searches have to be initiated manually.
- Viewer results cannot be exported or downloaded.
- The implemented software does not automatically provide multiple degrees of separation searches.
- Multiple searches can be performed, but each one has to be initiated manually.
- After two or three such searches, the results tend to loop back onto prior searches.

Therefore, the results of multiple degrees of separation searches are limited.

- Viewer results are not made available in list form.
- The FEC data is not integrated or matched into the client's database.
- Because the Viewer results are based on relationships, the user cannot search for contributors. For example, the Viewer cannot search for contributors to federal campaigns, for large donors, or who contributes to what kind of candidates. It cannot search for those who have not given the maximum contribution to any candidate or who have not reached their aggregate maximum for the entire election cycle. Thus, unlike lists of individuals sold by list brokers, a committee using the Relationship Viewer does

not produce a list of individuals that were not already in the committee's files and does not provide information in downloadable or exportable form.

27. I believe the 360 Relationship Viewer is an incidental, ancillary feature. The inclusion of the Relationship Viewer was not a principal purpose for publishing Aristotle 360. It is not a reason why committees buy the program other than that it demonstrates an example of the sophistication of the software, and there is no evidence that it has been used by any committee except for training and familiarization, and certainly not to solicit contributions.
28. The same search results provided from the FEC files by the 360 Relationship Viewer are provided to the public free of charge on Aristotle's web site, [www. Aristotle.com](http://www.Aristotle.com), under the "Political Data" tab in the "Contributor Data Lookup." Aristotle does not charge extra for the Relationship Viewer or access to the FEC data. The cost of the software is the same whether the FEC data is accessed or not, and whether the Relationship Viewer is ever used or not.
29. I have read the NGP complaint, and it does not correctly describe the 360 Relationship Viewer for the reasons listed above. Even the hypothetical example on page 4 is wrong. The Relationship Viewer user cannot look up Dunder or Dunder employees in the FEC data base. The user can only look up one individual at a time, and the user must have that individual's name before initiating the search that may return contribution history from the FEC database, but no name or address data for that person is returned. The result of the search may also include individual contribution histories for the individual and those within one relationship degree, but no names or addresses derived from the FEC's records are displayed. In NGP's example, if CEO Smith's name and contribution history were to appear (or any of Dunder's

Pursuant to 28 USC 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Washington, D.C. on the 12 day of September 2010.

**Dean A. Phillips**

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## Aristotle's Misuse of FEC Data Subject of FEC Complaint

### Company Is Selling Downloadable FEC Contributor Data for Soliciting Contributions

WASHINGTON, July 19 /PRNewswire-USNewswire/ — A complaint was filed today against Aristotle International at the Federal Election Commission (FEC) by NGP Software, citing Aristotle's commercial use of downloaded FEC contributor data to enable its clients to solicit contributions. FEC law states that commercial use of FEC data is illegal, as is using such data for soliciting contributions.

In Aristotle's "360" fundraising product, it advertises a "Relationship Manager" feature which plainly uses FEC contributor information, displaying the federal contribution history for individuals with whom a given Aristotle customer has no relationship. Aristotle's web page with a demo of the feature states in as a second sentence, "Our powerful web-based system quickly uncovers relationships that can be targeted for votes, dollars, or grass-roots support." (PR Newswire release for Aristotle International, 7/19/10, emphasis added). An Aristotle ad about the feature states "Only Aristotle can provide the data needed to point the way to the thousands of donors predisposed to contributing to your campaign, PAC or grassroots group. Our powerful web-based system tells you everything you need to know about a prospect or contributor." (Advertisement in Politics Magazine, 3/10/10, emphasis added)

Federal law prohibits selling or using individual contributor data copied from FEC reports: "no information copied from [FEC] reports or statements may be sold or used by any person for the purpose of soliciting contributions or for commercial purposes". (2 U.S.C. section 438(a)(4))

"Aristotle's marketing documents and their online demo clearly offer access, for a fee, to FEC contributor data for the purposes of solicitation, all of which is at the core of what the sale and use prohibition is meant to prevent," said Joe Birkenstock, former Chief Counsel for the Democratic National Committee. Birkenstock is campaign finance counsel to NGP Software, which filed the complaint against Aristotle.

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The issue of use of FEC contributor data is particularly relevant this year. The Supreme Court upheld disclosure requirements in the Citizens United decision, and under the DISCLOSE Act passed by the U.S. House on June 24th in response, the types of entities required to report to the FEC would be expanded to include non-profits. In an earlier FEC enforcement case regarding Aristotle's use of FEC data in their earlier product (Campaign Manager 5/CM5), three FEC Commissioners voted that Aristotle had broken the law, stating, "We cannot ignore the clear statutory language prohibiting any FEC reports or statements from being sold or used by any person for the purpose of soliciting contributions or for any commercial purpose. Accordingly, we voted to find probable cause to believe that Aristotle violated 2 U.S.C. 438(a)(4)." (MUR 5625, FEC Commissioners Statement of Reasons 5/19/10, p. 8) Aristotle made excuses in that case, saying that the ads stating that clients could use the data for solicitation were a "mistake" that had been corrected; that it was an incidental feature and "nobody uses it"; that its actual purpose was for compliance; and that "you can't download" contribution data. (FEC Hearing Transcript, 9/23/09) Three Commissioners found these excuses to be inaccurate, noting that Aristotle's advertising still promoted using the FEC data for solicitation, and that the feature's use for compliance was "negligible at best." (FEC Commissioners Statement of Reasons 5/19/10, p3 and p. 5) However, the three Republican-appointed Commissioners believed Aristotle's excuses about their CM5 product, and the Commissioners deadlocked 3-3 on whether to proceed against Aristotle. None of the excuses Aristotle made about their CM5 product are available to Aristotle regarding the 360 product. As noted above, Aristotle is explicitly marketing the use of FEC data in 360 for solicitation. Aristotle itself calls the 360 feature "important" and filed for a patent on it this year. And Aristotle's own demo of the 360 feature states, "You can export your connection map to many different standard formats for customized use." So Aristotle cannot use the same excuses again in this case.

Given the importance that Aristotle has given this matter by trying to patent their use of FEC contributor data, NGP believes that the FEC Commissioners will take a hard look at the complaint, and provide a definitive ruling regarding Aristotle's use of FEC data.

#### **About NGP Software**

NGP is the leading provider of fundraising and compliance software for Democratic campaigns. NGP is used by over 75% of the Democrats in the U.S. House and Senate; the DNC, DSCC, DCCC, and DGA; over 90% of Democratic state parties; and in total over 1,700 total clients. For 12 years, NGP has helped clients succeed and win by delivering a unique mix of products, political and technology expertise, and outstanding client services. <http://www.ngpsoftware.com>

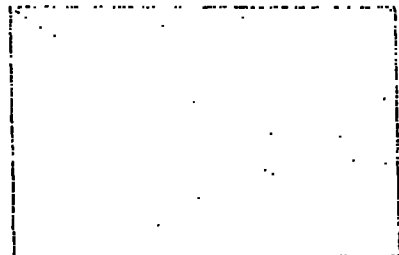
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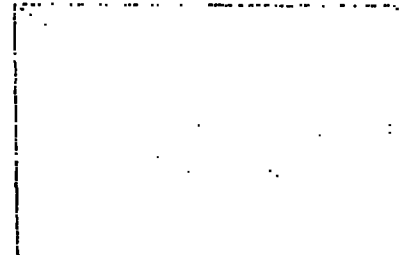
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